

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	4:02CR3194
	)	
Plaintiff,	)	<b>MEMORANDUM</b>
vs.	)	<b>AND ORDER</b>
	)	
JOHN R. FREES,	)	
	)	
Defendant.	)	

Defendant pleaded guilty to one count of conspiracy to distribute and possess, with intent to distribute, 500 grams or more of methamphetamine and was sentenced to 252 months' imprisonment and 10 years of supervised release on August 13, 2003. No immediate appeal was taken.

On October 24, 2005, Defendant, appearing pro se, filed a "motion to proceed in forma pauperis" which he states "should be construed by this Court as the movant's formal 'Notice of Appeal'." (Filing 37.) Filed at the same time were a "motion for request of trial transcripts" and an unsigned form "application to proceed without prepayment of fees and affidavit." (Filings 38 and 39, respectively.)

Defendant's notice of appeal was not filed within the 10-day period specified by Fed. R. App. P. 4(b)(1)(A)(i), nor within the 30-day extended period provided for cases of excusable neglect under Fed. R. App. P. 4(b)(4). Defendant's motion for leave to proceed in forma pauperis therefore will be denied, and a certification that the appeal is not taken in good faith will be issued pursuant to Fed. R. App. P. 24(a)(3). Copies of this memorandum and order will be provided to the Court of Appeals and to Defendant's court-appointed attorney of record.

Accordingly,

IT IS ORDERED that:

1. Defendant's notice of appeal (filing 37), treated as a motion for extension of time to appeal, is denied.
2. The clerk of the court shall not process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filing by Defendant.
3. Defendant's motion to proceed in forma pauperis on appeal (filings 37, 39) is denied.
4. Pursuant to Fed. R. App. P. 24(a)(3), the court certifies that Defendant's appeal is not taken in good faith; the appeal is untimely and is without any apparent legal basis.
5. Plaintiff's request for transcript (filing 38) is denied.
6. Pursuant to Fed. R. App. P. 24(a)(4), the clerk of the court shall forward a copy of this memorandum and order to the Clerk of the United States Court of Appeals for the Eighth Circuit.
7. The clerk shall also forward a copy of this memorandum and order to Defendant's counsel of record, John F. Aman.

DATED: October 31, 2005.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge